

By Marjorie Cohn

From Portside

Travelers to Cuba and music lovers are familiar with the song "Guantanamera"-- literally, the girl from Guantanamo. With lyrics by Jose Marti, the father of Cuban independence, Guantanamera is probably the most widely known Cuban song. But Guantanamo is even more famous now for its U.S. military prison. Where "Guantanamera" is a powerful expression of the beauty of Cuba, "Gitmo" has become a powerful symbol of human rights violations--so much so that Amnesty International described it as "the gulag of our times."

That description can be traced to January 2002, when the base received its first 20 prisoners in shackles. General Richard B. Myers, chairman of the Joint Chiefs of Staff, warned they were "very dangerous people who would gnaw hydraulic lines in the back of a C-17 to bring it down." We now know that a large portion of the 750 plus men and boys held there posed no threat to the United States. In fact, only five percent were captured by the United States; most were picked up by the Northern Alliance, Pakistani intelligence officers, or tribal warlords, and many were sold for cash bounties.

The Guantanamo story starts in 1903, when the U.S. Army occupied Cuba after its war of independence against Spain. The Platt Amendment, which granted the United States the right to intervene in Cuba, was included in the Cuban Constitution as a prerequisite for the withdrawal of U.S. troops from the rest of Cuba. That provision provided the basis for the 1903 Agreement on Coaling and Naval Stations, which gave the United States the right to use Guantanamo Bay "exclusively as coaling or naval stations, and for no other purpose."

In 1934, President Franklin D. Roosevelt signed a new

treaty with Cuba that allows the United States to remain in Guantanamo Bay until the U.S. abandons it or until both Cuba and the United States agree to modify their arrangement. According to that treaty, "the stipulations of [the 1903] agreement with regard to the naval station of Guantanamo shall continue in effect." That means Guantanamo Bay can be used only for coaling or naval stations. Additionally, article III of the 1934 treaty provides that the Republic of Cuba leases Guantanamo Bay to the United States "for coaling and naval stations." Nowhere in either treaty did Cuba give the U.S. the right to utilize Guantanamo Bay as a prison camp.

It is no accident that President George W. Bush chose Guantanamo Bay as the site for his illegal prison camp. His administration maintained that Guantanamo Bay is not a U.S. territory, and thus, U.S. courts are not available to the prisoners there. But, as the Supreme Court later affirmed, the United States, not Cuba, exercises exclusive jurisdiction over Guantanamo Bay. Amanda Williamson, a spokeswoman in the Red Cross' Washington office, noted that prisoners at Guantanamo "have been placed in a legal vacuum, a legal black hole." Amnesty International went further, noting an obvious gap between U.S. rhetoric and practice: "Given the USA's criticism of the human rights record of Cuba, it is deeply ironic that it is violating fundamental rights on Cuban soil, and seeking to rely on the fact that it is on Cuban soil to keep the U.S. courts from examining its conduct."

Although the Convention Against Torture, a treaty the United States has ratified, forbids the use of coercion under any circumstances to obtain information, prisoners released from Guantanamo have detailed assaults, prolonged shackling in uncomfortable positions, sexual abuse, and threats with dogs. Mustafa Ait Idr, an Algerian citizen who was living in Bosnia when he was sent to Guantanamo, charged that U.S. military guards jumped on his head, resulting in a stroke that paralyzed his face. They also broke several of his fingers and nearly drowned him in a toilet. Mohammed Sagheer, a Pakistani cleric, claimed the wardens at Guantanamo used drugs "that made us senseless." French citizen Mourad Benchellali, released

from Guantanamo in July 2004, said, "I cannot describe in just a few lines the suffering and the torture; but the worst aspect of being at the camp was the despair, the feeling that whatever you say, it will never make a difference." Benchellali added, "There is unlimited cruelty in a system that seems to be unable to free the innocent and unable to punish the guilty."

Australian lawyer Richard Bourke, who has represented many of the men incarcerated at Guantanamo, charged that prisoners have been subjected to "good old-fashioned torture, as people would have understood it in the Dark Ages." According to Bourke, "One of the detainees had described being taken out and tied to a post and having rubber bullets fired at them. They were being made to kneel cruciform in the sun until they collapsed." Abdul Rahim Muslimdost, an Afghan who was released from Guantanamo in April 2005, said he suffered "indescribable torture" there.

U.S. and international bodies have verified reports of torture and abuse. Physicians for Human Rights found that "the United States has been engaged in systematic psychological torture of Guantanamo detainees" at least since 2002. FBI agents saw female interrogators forcibly squeeze male prisoners' genitals and witnessed detainees stripped and shackled low to the floor for many hours. In February 2006, the United Nations Human Rights Commission reported that the violent force-feeding of detainees by the U.S. military at Guantanamo amounts to torture.

The very existence of the Guantanamo prison camp harms America's international reputation. A January 2005 editorial in *Le Monde* concluded, "The simple truth is that America's leaders have constructed at Guantanamo Bay a legal monster." Moreover, it has created more enemies of the United States. Writing for the *New York Times*, Somini Sengupta maintained that Guantanamo Bay has been a setback in the war on terror insofar as it has "emerged as a symbol of American hypocrisy."

The list of Guantanamo critics is a long one. Archbishop Desmond Tutu dubbed it a stain on the character of the United States. Former U.N. Secretary General Kofi Annan said the United States must close

the camp as soon as possible. The Economist called for the facility to be dismantled, described the treatment of the prisoners there as "unworthy of a nation which has cherished the rule of law since its very birth," and claimed it "has alienated many other governments at a time when the effort to defeat terrorism requires more international co-operation in law enforcement than ever before." The National Lawyers Guild, Association of American Jurists, Inter-American Commission on Human Rights, and Amnesty International have all called for closing the prison camp and releasing or charging prisoners with criminal offenses in accordance with international legal norms.

In addition to legal and political problems with Guantanamo, there are enormous human costs to consider. Attorney Joseph Margulies has been to death row in six states and watched his client be executed. But as he noted, "I have never been to a more disturbing place than the military prison at Guantanamo Bay. It is a place of indescribable sadness, where the abstract enormity of 'forever' becomes concrete: this windowless cell; that metal cot; those steel shackles."

Indeed, Army Col. Terry Carrico, the first warden at Guantanamo, complained that when he was there, the men were held in "basically outdoor cages," adding, "It's what you would normally find in a veterinarian's facilities to hold animals." Carrico said "very few" of the men imprisoned during his tenure had useful intelligence. He favors closing Guantanamo, but doubts that will ever happen.

President Barack Obama said a year ago that he was committed to closing Guantanamo because it was a symbol that was "probably the No. 1 recruiting tool" on terrorist websites. But Obama signed the National Defense Authorization Act (NDAA), which bars any transfer of detainees to U.S. prisons, even for trial. The act also restricts the President's authority to transfer detainees to other countries. Of the 171 men remaining at Guantanamo, 89 have been cleared for release by a review conducted by the CIA, FBI, military, and Department of Homeland Security. But those men will likely die at Guantanamo because Obama refused to put the brakes on Congress's use of the

issue as a political football in the NDAA.

In a recent op-ed in The New York Times, Harvard lecturer Jonathan M. Hansen wrote, "It is past time to return this imperialist enclave to Cuba," adding, "It has served to remind the world of America's long history of interventionist militarism."

Obama should heed Hansen's words. For the abiding presence of the Guantanamo gulag is not simply illegal and immoral. It also continues to be a symbol of U.S. hypocrisy, and makes us a target for more terrorist attacks.

*Marjorie Cohn is a professor at Thomas Jefferson School of Law and past president of the National Lawyers Guild. Her most recent book is *The United States and Torture: Interrogation, Incarceration, and Abuse*. [See her blog](#) .*